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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,142	02/23/2004	George Wells	PB40005	7107

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Philip H. Burrus, IV
460 Grant Street
Atlanta, GA 30312

EXAMINER

SKURDAL, COREY NELSON

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/783,142

Applicant(s)

WELLS, GEORGE

Examiner

Corey N. Skurdal

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/23/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 10/735932 in view of Brannon (US 769,428).

Regarding claims 1 and 16, Application No. 10/735932 discloses a holster including: a planar member; a holding member; retaining member with a means for creating friction coupled thereto, wherein the planar member is preloaded against the retaining member. Application No. 10/735932 does not disclose that there are two retaining members extending from the planar member towards the holding member. However, Brannon teaches the use of a holster on a belt with retaining members 12

Art Unit: 3727

which extend from the planar member toward the holding member. Therefore it would have been obvious to one skilled in the art at the time of invention to provide Application No. 10/735932 with two retaining members extending from the planar member toward the holding member in order to enable an alternate way of mounting the clip to a belt.

Regarding claim 2, Application No. 10/735932, claim 1 discloses a frictional member coupled to the retaining member.

Regarding claim 3, the modified Application No. 10/735932 discloses the claimed invention where, one retaining member can be considered a front member 'higher' on the planar member than the lower. Referring to Brannon, the shorter arm 9 is considered the lower portion of the planar member, and as such the retaining members have an upper and lower distinction.

Regarding claim 4, Application No. 10/735932, claim 2 discloses a curved portion of the planar member.

Regarding claim 5, Application No. 10/735932, claim 3 discloses one or more fasteners from the claimed group.

Claim 6 is disclosed by claim 4 of Application No. 10/735932.

Claim 7 is disclosed by claim 5 of Application No. 10/735932.

Claim 8 is disclosed by claim 6 of Application No. 10/735932.

Claim 9 is disclosed by claim 7 of Application No. 10/735932.

Claim 10 is disclosed by claim 8 of Application No. 10/735932.

Claim 11 is disclosed by claim 9 of Application No. 10/735932.

Claim 12 is disclosed by claim 10 of Application No. 10/735932.

Claim 13 is disclosed by claim 11 of Application No. 10/735932.

Claim 14 is disclosed by claim 11 of Application No. 10/735932.

Claim 15 is disclosed by claim 12 of Application No. 10/735932.

Claim 17 is disclosed by claim 16 of Application No. 10/735932.

This is a provisional obviousness-type double patenting rejection.

3. Claim 18 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 16 of copending Application No. 10/735932 in view of Anderson (US 4,253,592). Application No. 10/735932 discloses the claimed invention but does not have a holster aligned at a non-perpendicular angle with respect to the belt. However, Anderson figure 1, teaches it is common in the art to orient a holster in the claimed manner by making the attachment members rotateable. Therefore it would have been obvious to one skilled in the art at the time of invention to provide Application No. 10/735932 with the attachment of Anderson in order to allow various orientations of the holster.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7, 13 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Brannon (US 769,428).

Regarding claim 1 and 5, Brannon discloses the claimed invention including: a holster; a planar member 7 with cantilever beam capabilities; a holding member 5 coupled to the planar member by rivets 6; two retaining members 10 extending from the planar member to the holding member; a closed loop formed by the planar, holding and retaining members; and the retaining members being preloaded against the holding member by the spring action of the planar member.

Regarding claim 2, Brannon discloses frictional members 14 coupled to the retaining members 10, adapted to engage the waistband creating friction so as to lock the supporting loops to the waistband.

Regarding claim 3, Brannon discloses the claimed invention where, one retaining member can be considered a front member 'higher' on the planar member than the lower. Referring to Brannon, the shorter arm 9 is considered the lower portion of the planar member, and as such the retaining members are considered to have an upper and lower retaining member.

Regarding claim 4, Brannon discloses the planar 7 with arms 9 which form a concave curvature.

Regarding claims 6 and 7, Brannon discloses a holding member 5 formed from a single piece of leather, and formed such that it is folded back onto itself and stitched together along an outer edge (see Figure 1, dashed lines).

Regarding claim 13, Brannon discloses means for creating friction 14 disposed about the retaining members 10,12.

Regarding claim 15, Brannon discloses the claimed invention with retaining members 10,12 extending at about 90° from the planar member.

Regarding claim 16, the Brannon discloses the claimed invention including a holster to be configured with a firearm, the holster having a planar 7, holding 5, and retaining members 10, 12 and means for creating friction 14 coupled to the retaining members. Furthermore, Brannon also discloses a belt (line 85-86) being used and held in the closed loop formed by the planar, holding, and retaining members, effectively satisfying the claims.

Regarding claim 17, the planar member is preloaded by spring means (line 50) so as to exert force against the holding member 5 through the retaining members 10,12.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brannon in view of Nichols (US 4,504,001).

Regarding claim 8, Brannon discloses the invention substantially as claimed and as applied to claim 7 above, but does not disclose a notch portion for accommodating the sight of a firearm. However, Nichols teaches the use of a holding member 11 with a notch (Figure 2) located between 21 and 14. Therefore it would have been obvious to

one skilled in the art at the time of invention to use the holding member of Nichols in place of Brannon's in order to provide a notch in which a firearm sight would fit.

Regarding claim 9, the modified device of Brannon discloses the claimed invention wherein the holding member (Nichols Figure 1) has an area at 11 for the trigger guard of a firearm.

Regarding claims 10 and 11, the modified Brannon device discloses the claimed invention including a holding member molded to be the negative image of the firearm (col. 2 lines 30-35) and stitching used to close the open end of the U-shaped holding member.

Regarding claim 18, Nichols further teaches attachment members 24 and 25 (Figure 5A) for connecting the belt loop member to the holding member at tilted angle, such that the holster hangs at a non-perpendicular angle with respect to the belt of a user. Therefore it would have been obvious to one skilled in the art at the time of invention to provide Brannon with fasteners located at a tilted angle with respect to the holding member, in order to make removing the firearm easier.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nichols (5,544,794) discloses a gun holster. Nichols (5,820,003) discloses a gun holster. Wisser (5,282,559) discloses a gun holster. Hellwag (5,622,295) discloses a gun holster. Nordberg (5,235,728) discloses a device for attaching to a belt. Brady (5,114,061) discloses a clip with retaining means. Bucheimer

Art Unit: 3727

(2,917,213) discloses a gun holster. Beletsky (6,588,639) discloses a gun holster. Hill (5,167,355) discloses a gun holster.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corey N. Skurdal whose telephone number is 571-272-9588. The examiner can normally be reached on M-Th 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CNS


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER